

RTD-123

Considering Delta Conveyance and Ecosystem Restoration Without the Bay Delta Conservation Plan

Summary: This report discusses recently announced changes to the Bay Delta Conservation Plan that alter its relationship to the Council's Delta Plan and may prompt the Council to consider updating aspects of the Delta Plan.

Background

In 2006 a group of state and federal water and wildlife agencies, together with local and regional water suppliers, began work on a comprehensive effort to improving the way water was exported from the Delta and the health of the Delta ecosystem. Known as the Bay Delta Conservation Plan (BDCP), this approach was anticipated to result in a 50-year Natural Community Conservation Plan (NCCP) with the goal of recovering the Delta's endangered or threatened species by improving the conveyance of water from the Sacramento River to the south Delta pumps of the Central Valley Project and State Water Project, by establishing parameters for operating those projects, and by restoring wildlife and fish habitats in and around the Delta.

The 2009 Delta Reform Act anticipated that the BDCP would be completed successfully and included in the Delta Plan (Water Code section 85320) via a pathway distinct from the consistency certification process set out for other projects in the Delta (Water Code sections 85225-85225.25). The law specified how the BDCP was to be reviewed, including the roles of the Delta Stewardship Council and the Delta Independent Science Board, and the conditions under which the BDCP was to be incorporated into the Delta Plan.

The 2013 Delta Plan recommended the prompt and successful completion of the BDCP. Appendix A of the Delta Plan (Attachment 1) described the Council's role in the BDCP and provided, in part, that "should the BDCP process not be completed by Jan. 1, 2016, the Council intends to revisit the issue of conveyance to determine how to facilitate improved conveyance facilities without the BDCP."

WaterFix and EcoRestore

This April, the Administration announced a new preferred alternative to the BDCP. The new alternative would not complete the BDCP as an NCCP, but instead proposes construction of water conveyance facilities through an initiative called California

WaterFix. A parallel effort called California EcoRestore proposes to accelerate implementation of a suite of habitat restoration actions being planned in the Delta.

- California WaterFix. WaterFix proposes to upgrade the State Water Project's (SWP) Delta water conveyance system with three new Sacramento River intakes near Hood and Clarksburg, each with 3,000 cubic-feet per second (cfs) capacity, and two gravity-fed, 40-foot diameter tunnels to convey diverted water 30 miles to the existing SWP pumping plants at Clifton Court. The project would provide an average annual yield of 4.9 million acre-feet of water.

The project is similar to that described in DWR's briefing at the Council's January 2015 meeting, with refined designs for the North Delta intakes that convert previously-proposed concrete sedimentation basins into two earthen bays. This change eliminates the need to drive hundreds of piles into the ground, reduces equipment noise and truck trips, and significantly reduces the volume of concrete needed to build the intakes. California WaterFix would include about 2,100 acres of habitat restoration to mitigate for the construction and operation of the new water facilities. This acreage is in addition to the habitats to be restored by the EcoRestore initiative. (For more details on CA WaterFix <http://www.californiawaterfix.com/>)

- California EcoRestore. EcoRestore will accelerate and implement a suite of long-planned habitat restoration actions to support the long-term health of the Delta's native fish and wildlife species. These include more than 30,000 acres of habitat restoration (17,500-plus acres of floodplain restoration, 9,000 acres of tidal and subtidal habitat, 3,500 of wetlands managed for subsidence reversal and carbon management, and more than 1,000 acres of other aquatic, riparian and upland habitat projects, including multi-benefit flood management projects.

EcoRestore also would implement multiple fish passage improvement projects in the Yolo Bypass and other key locations, coordinate with existing local Habitat Conservation Plans and NCCPs, and "through the Council's Delta Science Plan, leverage collaborative Delta science efforts such as the Interagency Ecological Program and Interim Science Action Agenda, and undertake investigations that support adaptive management and long-term understanding of Delta systems." (From EcoRestore Fact Sheet http://gov.ca.gov/docs/Delta_Fact_Sheets_4.30.15.pdf)

The Delta Stewardship Council's Changing Role

Because the EcoRestore and WaterFix initiatives will not be pursued/approved as an NCCP, they will not be incorporated into the Delta Plan pursuant to Water Code section 85320. Rather, the WaterFix's tunnels and EcoRestore's habitat restoration actions would likely be subject to the consistency certification provisions of Water Code sections 85225-85225.25. Some roles assigned to the Council remain relevant, but others will change.

EIR Review. The Council and the Delta Independent Science Board will review the recirculated draft EIR. We expect these reviews to occur this summer/early fall. Some of the unique requirements for the BDCP's EIR imposed by Water Code section 85320(b)(2) may no longer be relevant because the BDCP will no longer be considered for direct inclusion in the Delta Plan.

Consultation. We expect the Council's role in consulting with the Department of Water Resources (DWR) as the project develops will continue. The nature of that consultation may change, however, especially following completion of the Council's review of the draft recirculated EIR. We will encourage DWR to engage in early consultation regarding the project's consistency with the Delta Plan pursuant to Water Code section 82225.5.

Consistency Certification. Because the preferred WaterFix alternative will not be an NCCP, it will not be automatically incorporated into the Delta Plan. Instead, the Department of Water Resources will need to certify the project's consistency with the Delta Plan pursuant to Water Code section 85225 and the Council's Delta Plan implementing regulations, as will EcoRestore's individual habitat restoration projects.

Potential for Appeal. Certifications that the WaterFix or an EcoRestore initiative project are consistent with the Delta Plan can be appealed to the Council pursuant to Water Code section 85225.5-85225.25 by any person who claims that an action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on the achievement of one or both of the coequal goals or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta. This is a substantially different basis for appeal than would have applied to the BDCP under Water Code section 85320(e), which limited the grounds of appeal of the BDCP to failure to comply with the Natural Communities Conservation Act or CEQA, including fulfilling the Delta Reform Act's provisions about unique requirements for the BDCP's EIR.

What the Delta Plan Says About Restoration, Conveyance, Operations & Storage

If the BDCP had been incorporated into the Delta Plan, it would have added significant detail to the Delta Plan's provisions about water conveyance, system operations, ecosystem restoration (including restoration performance measures), adaptive management, Delta governance, and finance.

The Council may wish to consider whether, in the absence of the BDCP as an NCCP, it wishes to update the Delta Plan to further address those topics. The Delta Reform Act gives the Council latitude to consider such updates, providing that the Council may revise the plan as it deems appropriate. The Council may also request any state agency with responsibilities in the Delta to make recommendations with respect to revisions to the Delta Plan (Water Code section 85300(c)).

Over the past two years much has been done to act on the Delta Plan's recommendations for increased storage to improve supply reliability and system operations, and to begin implementation of ecosystem restoration. Issue papers detailing specific recommendations for storage and restoration have been endorsed by the Council.

Ecosystem Restoration. The current Delta Plan's regulations and recommendations address both long- and short-term aspects of restoration in the Delta. These include regulations to protect long-term opportunities for restoration(ER P3), expand floodplain and riparian habitat in levee projects (ER P4), and require that the State Water Resource Control Board's Delta flow objectives be used to determine consistency with the Delta Plan(ER P1). In addition to numerous recommendations in the Delta Plan itself, the Council last year endorsed a restoration issue paper that, in part based of work of the Delta Independent Science Board, makes recommendations for both near- and long-term projects in the Delta.

Because of the switch from a long-term (50-year) NCCP commitment for large amounts of restoration (BDCP) to a near-term commitment to expedite a smaller number as a minimum (EcoRestore), the Council may wish to consider updating the Delta Plan's regulations and recommendations on restoration, but perhaps not before the next regular update.

Storage. The Delta Plan recommends that the Department of Water Resources promptly complete its studies of water storage alternatives, including assessment of additional benefits of integrating the new storage with Delta conveyance improvements (WR R13). It also recommends that DWR, in coordination with other agencies, conduct a survey to identify additional projects that could be implemented in the next five to 10 years to expand existing and new surface and groundwater storage, improve operations of existing conveyance facilities, and enhance conjunctive use and transfer programs (WR R14). DWR's studies of storage alternatives are now largely complete, and the California Water Commission has been completed a preliminary survey of other storage projects that could be completed in the next five to 10 years.

In addition, the Council endorsed a storage issue paper that makes several recommendations for large-scale and smaller-scale opportunities for both surface and groundwater storage and the linkages between storage, conveyance and operations flexibility.

As a result, the Council may wish to consider updating the Delta Plan's regulations and recommendations on storage, but perhaps not before the next regular update.

Proposition 1, approved by voters last November, includes a specific spending proposal of \$2.7 billion for the public benefits associated with water storage projects that improve the operation of the state water system. The California Water Commission has initiated the Water Storage Investment Program (Program) to develop the criteria for evaluating potential storage projects. Specifically this includes developing regulations to refine the

statutory mandates, developing Program guidelines, and developing Project Solicitation Packages (PSP) to receive water storage project applications. The Council staff participates in a State Agency Advisory Committee that assists the Commission in developing the Program.

Conveyance. The Delta Reform Act provides:

“The Delta Plan shall promote options for new and improved infrastructure relating to the water conveyance in the Delta, storage systems and for the operation of both to achieve the coequal goals” (Water Code section 85304).

“Inherent in the coequal goals for management of the Delta: ...
Improve the water conveyance system and expand statewide water Storage” (Water Code section 85020(f)).

In the Delta Plan, the Council noted that conveyance options were currently being studied *in detail* by the agencies and interested parties preparing the BDCP. The Plan stated that it would be a wasteful and duplicative exercise for the Council to include a regulatory policy regarding conveyance because 1) any regulation would be overridden if the BDCP was incorporated into the Delta Plan, and 2) developing the regulation would require the same extensive policy, scientific, and environmental analysis the BDCP was already doing. Instead, the Council determined that the best option was to encourage the lead agencies of the BDCP to complete their work in short order.

Nevertheless, the Delta Plan contains substantive narrative that could be considered as principles to guide conveyance (Attachment 2).

The Council may wish to consider whether to update the Delta Plan to reflect the evaluations of conveyance and/or elevate existing narrative statements to provide additional guidance or recommendations or regulatory policies to guide their implementation.

Fiscal Information

The Governor’s FY 16-17 budget for the Council includes one new PY (staff member) and \$1 million in consulting funds to address the BDCP. This budget is likely sufficient to address needs for consultation, EIR, and consistency review related to the WaterFix and EcoRestore initiatives. More funding would likely be needed to update the Delta Plan.

List of Attachments

Attachment 1: Appendix A from the Delta Plan

Attachment 2: Conveyance, Storage and Operations Principles from the Delta Plan

Attachment 3: Letter from Chair Fiorini to the Delta Plan Interagency Implementation
Committee Regarding Changes to BDCP and Implications to the Delta
Plan

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